IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.APPLICATION NO.96 OF 2005

IN

M.J.PETITION NO.A-841 OF 2001

Mrs.Mohana Harikrishna Naidu ...Applicant

Versus

Mr.Harikrishna Balsunder Naidu ...Respondent

.....

Mr.S.S.Lanke for Applicant.

Mr.Abhay Patki i/b Mr.Anil L.Gala for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 24, 2006.

P.C.

1. Heard Counsel for the parties. Perused the pleadings and the documents on record.

2. By this Application, Applicant wife prays for transfer of proceedings instituted by the Respondent husband before the Family Court at Bandra, Mumbai to be heard and decided by the Family Court at Pune within whose jurisdiction the

Applicant is ordinarily residing along with her child aged about six and a half years.

3. Three grounds have been pressed into service by the Applicant. The first ground is that the Applicant is seriously suffering from arthritis and was admitted in Sasoon General Hospital for treatment in the past. The Applicant is still undergoing the said treatment. On account of her illness, it is difficult for her to undertake journey from Pune to Mumbai to attend to Court proceedings. The second ground pressed is that the Respondent is persistent defaulter in paying the maintenance amount as well as the travelling expenses to be paid to the Applicant to enable her to attend to the hearing of the proceedings at Mumbai. Reliance is placed on the Application made before the Family Court in this behalf complaining of arrears of Rs.18,700/- (Rupees Eighteen Thousand Seven Hundred) payable from 1st October 2004 to 31st August 2005 as can be seen from Exhibit E at Page 86. Reliance is also placed on the document appended to the reply affidavit filed by the Respondent Exhibit 'A' collectively, which is receipt for amount deposited in respect of arrears

between December 2004 to December 2005. The case of the Applicant is that she has to maintain herself and her daughter and has no source of income and due to non-payment of maintenance and travelling expenses in time, it is impossible for the Applicant to ensure presence at the time of hearing of the proceedings at Mumbai. The third and important ground which is pressed into service is that the Applicant has to look after minor child who is six and a half years old who is presently attending School at Kendriya Vidyalaya, Pune. It is stated that if the Applicant is required to travel to Mumbai to attend to Court proceedings, studies of her child will be disrupted as inevitably she will also have to be brought to Mumbai along with the Applicant.

4. Counsel for the Respondent on the other hand submits that merely because the Applicant is wife, that by itself, can be no ground to transfer the proceedings. He submits that the illness of the Applicant is not of such a nature that she is totally bed-ridden or not able to travel at all. Insofar as grievance regarding defaults committed by the Respondent, it is submitted that the

Respondent is substantially complying the directions of this Court requiring the Respondent to pay sum of Rs.12,000/- (Rupees Twelve Thousand) per month to the Applicant, which amount has been deposited in Court. Counsel for the Applicant, however, submits that the Applicant has not received any such amount. That is not the scope of controversy in the present proceedings. Insofar as the grievance about the difficulty that may be caused to the minor child, learned Counsel for the Respondent submits that, that cannot be the sole basis to transfer the case from Mumbai to Pune.

5. Besides, Counsel for the Respondent has placed reliance on the decision of the Supreme Court reported in **(2005) 11 SCC 446 in the case of Gargi Konar vs. Jagjeet Singh** and another decision in the case of **Preeti Sharma vs. Manjit Sharma reported in (2005) 11 SCC 535**. In my opinion, however, the Application as filed by the present Applicant will have to be granted having regard to the fact situation of the present case. The decision pressed into service by the Respondent is of no avail. In case of **Gargi Konar (Supra)**, the only ground for transfer of the Petition pressed

into service by the wife was that she was helpless woman, fully dependent on her father and that her financial capacity was not such that she can contest the proceedings in the Court where the same were pending.

6. In the present case, there is something more complained by the Applicant. She has difficulty in travelling because of her arthritis problem, for which, she was required to be hospitalised. Besides, the Applicant has to take care of her child who is six and a half years old and presently taking education at Pune. If the Applicant is required to travel to Mumbai, inevitably, the child will have to accompany her, which will disrupt her schooling. Besides, grievance of the Applicant is that even maintenance and travelling allowance is not paid in time by the Respondent. Even in case of **Preeti Sharma (Supra)**, similar complaint was made on behalf of the Petitioner wife that she was an unemployed lady and totally dependent on her uncle and tht she would be hard-pressed to defend the proceedings in the Court where the same were pending at the relevant time.

7. As mentioned earlier, the fact situation of the present case is different from the one referred to in the two reported decisions pressed into service on behalf of the Respondent.

8. Counsel for the Petitioner has justly relied on the exposition of the Apex Court in the case of **Pratibha Khemka vs. Sanjay Kumar Khemka reported in 2005 (5) All.M.R. (S.C.) 670**, wherein, the Apex Court has observed that convenience of the lady has to be kept in mind. Reliance is also placed on another decision of the Apex Court in the case of **Lalita A.Ranga vs. Ajay Champalal Ranga reported in 2000 (3) All.M.R. 250**. The Apex Court while allowing the request of the wife kept in mind the fact that she would find it difficult to travel from Jaipur to Mumbai. Besides, she has a small child who will also have to travel with her. The observations made by the Apex Court in the aforesaid two decisions pressed into service on behalf of the Applicant apply on full force to the case on hand.

9. In my opinion, the three grounds pressed on behalf of the Applicant are germane to consider

the request of the Applicant in the peculiar facts of the case and to allow the application in terms of prayer clause (a). However, whole doing so, in the interest of justice, the Court where the proceedings will now stand transferred, will have to ensure that the case as and when commences, proceeds on day-to-day basis, so that, the Respondent will not have to stay back in Pune for a long time or visit intermittently.

10. The Applicant through her Counsel assures that the Applicant will extend full cooperation to the Trial Court for early disposal of the case and shall not seek any adjournment on any count. That assurance is accepted.

11. Accordingly, Application made absolute in terms of prayer clause (a) with the above observations.

12. It is needless to observe that the Trial Court where the proceedings will now stand transferred will proceed from the same stage where the proceedings have reached before the Mumbai Court.

13. Application disposed of on the above terms.

14. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.